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NO. 98-1183

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

ANDERSON COMMUNITY SCHOOL CORPORATION,
Petitioner,

v.

JAMES RANDALL WILLIS, II, by his next friend and father
JAMES RANDALL WILLIS,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE PENN-HARRIS-MADISON SCHOOL CORPORATION AND THE INDIANA SCHOOL BOARDS ASSOCIATION AS AMICI CURIAE SUPPORTING CERTIORARI

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QUESTIONS PRESENTED

Can Anderson Community School Corporation administer drug tests to high school students who violate certain published rules, if professional literature and statistical data suggests that these violations bear a causal nexus to drug and alcohol use, consistent with the Fourth Amendment to the United States Constitution?

West Virginia Board of Education v. Barnette,
319 U.S. 624 (1943) 15

Miscellaneous

Bursch, J., *The 4 R's of Drug Testing in Public Schools: Random is Reasonable and Rights are Reduced*,
80 Minn.L.Rev. 1221, 1253 (May, 1996) 9, 16

Flatt-Moore, N., *Public Schools and Urinalysis: Assessing the Validity of Indiana Public Schools' Student Drug Testing Policies after Vernonia*, 1998 B.Y.U. Educ. & L.J. 239
(Spring, 1998) 14

Gibeaut, J., *Indiana Schools Push for Expansion of Drug Test Ruling*, 84-May A.B.A. J. 42 (May 1998) 14

Joubert D., *Message in a Bottle: The United States Supreme Court Decision in Vernonia School District 47J v. Acton*, 56
La.L.Rev. 959, 977 (1996)(Citations omitted) 10

National Indicator #20, National Education Goals Panel
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Rosenberg, I., *Public School Drug Testing: The Impact of Acton*,
33 Am.Crim.L.Rev. 349, 360 (Winter, 1996) 9

Stefkovich J., *Drug Testing of Students in Public Schools: Implications of Vernonia School District v. Acton for other Types of School-Related Drug Searches*, 113 Ed.Law Rep. 521, 538 (Dec. 12, 1996) 9

Traband, R., *The Acton Case: The Supreme Court's Gradual Sacrifice of Privacy Rights on the Altar of the War on Drugs*, 100 Dock.L.Rev. 1, 24-24 n 122 (Fall, 1995)(collecting studies) 9

U.S. Department of Justice, Bureau of Justice Statistics, School Crime Supplement to the National Crime Victimization Survey, Spring 1989 and 1995 6

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INTEREST OF THE AMICI CURIAE[1]

The Indiana School Boards Association ("ISBA"), established

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[1] Pursuant to Rule 37.6 of the Rules of the Supreme Court of the United States, this brief was authored by Thomas E. Wheeler, II and Lisa F. Tanselle. No counsel for any party was involved in the authoring of the brief and expenses related to the preparation of the brief were borne solely by the Amici. Both parties have consented in writing to the filing of this brief pursuant to Rule 37.2(a) and the consent has been filed with the Clerk's office.

in 1949, is a nonprofit association organized to assist local school boards in the state in their respective governance roles through education, information, services and legislative advocacy, ensuring the opportunity for the highest quality public education for all children. The ISBA represents all 1663 school board members who govern the 290 public school corporations in the State of Indiana.

The ISBA strongly believes in the deterrence of drug use in schools and in local control. The interest of the ISBA is in ensuring that local school boards have the ability to enact those policies they deem necessary to discourage student drug use and thereby reduce the number of discipline problems related to drug use that occur in the public schools of our state.

The Penn-Harris-Madison School Corporation ("PHM") provides educational and related services to approximately 9,600 students in north central Indiana. Based upon this Court's decision in *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), PHM developed a drug testing policy that provides for the random testing of students involved in extra-curricular activities, students who drive to school, and students who are suspended or expelled from school. PHM is currently the subject of a lawsuit challenging all three facets of its drug testing policy, *Joy v. Penn-Harris-Madison School Corporation*, Cause No. 3:98CV0603 AS (N.D.Ind. 1999).

PHM, like many school corporations throughout the United States, is faced with combating increased student drug use. Student education programs have proven largely unsuccessful in combating increasing levels of student drug use, particularly at the younger grades (6^{th} and 7^{th}). PHM desires to comply with the Fourth Amendment's requirements while at the same time providing the students entrusted to its care with a safe and conducive learning environment. PHM and

other schools throughout the United States have a direct interest in seeking the resolution of the issues left undecided in the *Vernonia* decision.

STATEMENT

This case concerns the proper balance between the ability of schools to provide a safe and conducive learning environment for the children entrusted to their care, and the respect for those children's constitutional rights. Specifically, the case presents the issue of whether the constitution permits random drug testing of students outside the extra-curricular context permitted in *Vernonia*.

REASONS FOR GRANTING THE PETITION

This case is "certworthy" for three reasons: (1) the question presented involves the single most important function of state and local governments, educating the Nation's children in a safe and conducive learning environment; (2) there is a tremendous amount of confusion in the Nation's schools and courts over the scope and application of the *Vernonia* decision leading to flawed policies and expensive litigation; and (3) this case presents the Court with the opportunity to decide the issue arguably "reserved" in *Vernonia* and develop a bright-line test for drug-testing in the Nation's schools. The Amici join in the Cert Petition and the reasons set forth therein relating to specific flaws in the Seventh Circuit's decision. The Amici write separately to highlight the need for the Court to clarify its holding in *Vernonia* and develop a comprehensive nationwide framework.

I. ENSURING A SAFE AND CONDUCIVE LEARNING ENVIRONMENT IS THE CORE FUNCTION OF THE NATION'S SCHOOLS.

The public schools' responsibilities are no longer merely to teach reading, writing, and arithmetic. Schools are now required to provide instruction in subjects such as health education, sex education, and morality. In addition to this nontraditional classroom instruction, schools are also being asked to shoulder the burden of feeding students breakfast and lunch, offering before and after school child care services, providing medical services such as vaccinations, testing for vision and hearing problems, and more intrusive medical care,[2] and developing student counseling and student assistance programs.

But public schools' responsibilities don't end there. The changing role of the Nation's schools is a reflection of changes in our society in general. As the social structure is shattered by the plagues of drugs and violence, so too are the schools and the educational environment. It is within this context that schools are being asked to take steps to ensure that the environment within their buildings is one that is safe and conducive to learning. Teachers are no longer concerned about students chewing gum in the classrooms or shooting spitwads. They must now be concerned with children smoking crack and shooting high powered rifles.

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[2] Not only are schools being required to assume all of the traditional roles of parents, they are also required to assume the role of physician as well. For example, in *Cedar Rapids Community School District v. Garrett F.*, 106 F.3d 822 (8th Cir. 1997) *cert. granted* 118 S.Ct. 1793 (U.S. 1998), a school was required to provide continuous nursing care to a quadriplegic student.

The expectations that many have of the public schools are reflected in the National Education Goals.[3] Two of the goals are particularly relevant in this case: Goal 1: By the year 2000, all children will start school ready to learn; and Goal 7: By the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning. One of the stated objectives of Goal 1 is that "[c]hildren will receive the nutrition, physical education activities, and health care needed to arrive at school with healthy minds and bodies, and to maintain the mental alertness necessary to be prepared to learn ... ." An objective of Goal 7 is that "[e]very school will implement a firm and fair policy on the use, possession, and distribution of drugs and alcohol."

To ensure that the school environment is one that is safe, where a student can focus on classroom instruction, school boards have been forced to go beyond the establishment of discipline rules intended to regulate student behavior in the classroom and have adopted policies prohibiting conduct such as sexual harassment, racial harassment, and bringing weapons to school.

A significant element in providing a safe and effective learning environment is the elimination of drugs and violence on school property and the deterrence of drug use among the student population. One of the most troubling problems public schools have had to contend with in recent years has been the increase in the availability of drugs at school, the use of drugs by students, and the number of violent acts committed at school. According to a recent survey, *Students' Report*

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[3] Originally developed in 1989 and entitled Goals 2000, there were six goals for schools nationwide to strive for by the year 2000. The National Education Goals Panel, created in 1990, has reviewed these goals annually. The Panel has now identified eight goals for the nation's schools.

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of School Crime: 1989 and 1995,[4] 65.3% of students aged 12 through 19 reported that drugs were available at school. That same survey noted that 14.6% of the student population reported they had been victimized at school. Several other studies have tracked illicit drug use by students in grades eight through 12 and have concluded that drug use by students continues to be a problem. The *1998 National Education Goals Panel Report* showed that the percentage of 10th graders using illicit drugs in 1997 was 40%, up from 24% in 1991.[5] The University of Michigan reported that 54.3% of the Nation's high school seniors had used an illicit drug by the time they reached their senior year of high school.[6]

Drug use effects a student's mind and body. This Court has already recognized that "[s]chool years are the time when the physical, psychological, and addictive effects of drugs are most severe." *Vernonia*, 515 U.S. at 661. Additionally, studies also show that some discipline problems in school, such as fighting, truancy, and vandalism, correlate with student use of alcohol and other drugs.[7] This correlation was evident in *Vernonia* where administrators and teachers reported in 1988 and 1989, a direct correlation between rising drug use and the number of disciplinary referrals, which had doubled since the early 1980's. *Vernonia*, 515 U.S. at 648-649. Finally, students impaired by drugs not only affect their own learning but disrupt the learning of others and the overall educational environment. This Court has noted

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[4] U.S. Department of Justice, Bureau of Justice Statistics, School Crime Supplement to the National Crime Victimization Survey, Spring 1989 and 1995.

[5] National Indicator #20, National Education Goals Panel Report, 1998.

[6] *Monitoring the Future Study*, December 18, 1999.

[7] *See e.g. Bowman, B., Aggressive and Violent Students; Statistics on Violence, Developmental Resources, Inc. (1994).*

that the effects of a drug-infested school "are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted." *Vernonia*, 515 U.S. at 661.

While schools have taught health education for many years and have been given federal dollars for drug education programming, studies indicate that classroom instruction is simply not enough. Even the district court in *Vernonia* noted that "[s]imply telling [students] that drug use is bad for their health and that they should stop using is invariably ineffective." *Acton v. Vernonia School District 47J*, 796 F.Supp. 1354, 1357 (D.Or. 1992). As a consequence many school boards have had to turn to other methods of curbing drug use. One of the most effective methods is the deterrent effect of random drug-testing. Drug-testing policies have been designed to identify and help students who are using drugs and to protect other students from the disruption and dangers posed by students using illegal drugs. They are not designed to be punitive. If a student tests positive the student is not disciplined or punished academically, instead the student and the student's parent are offered help, such as a student assistance program or a drug rehabilitation program. School boards have undertaken this responsibility in "furtherance of their roles as guardian and tutor of children entrusted to [their] care." *Vernonia*, 515 U.S. at 664.

The policy adopted by the Anderson school board is one that is designed to help students who use drugs and to protect other students who attend classes with drug-users. Students who disrupt the educational environment by fighting, being truant, or violating any other school rule that results in the student being suspended for at least three days, are those who are tested and offered assistance if the test is positive. This is precisely the type of drug-testing policy that Justice

O'Conner in her dissent in the *Vernonia* case opined would be a more reasonable program than the testing of athletes.[8]

Schools are in the business of educating students. But students must come to school "ready to learn" and not impaired by the use of drugs. Moreover, impaired students should not be permitted to disrupt the educational environment. In order to have "schools [that are] free from drugs, violence, and ... alcohol and [that] will offer a disciplined environment conducive to learning," school boards must be given the tools necessary to combat this problem. One of the most effective deterrent tools has been random drug testing.

II. THE ISSUE RESERVED IN VERNONIA HAS CREATED CONFUSION AMONG STUDENTS, COURTS AND SCHOOLS.

Far from stilling the school drug testing debate, the halting steps in this Court's decision in *Vernonia* simply fanned the fire of this debate with cautionary notes and arguably reserved issues.

A. The Reserved Issue

In its ruling approving the school's policy of randomly drug testing student athletes, the majority in *Vernonia* issued the following warning: "We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts." *Id.*, 525 U.S. at 664. The key phrase in this sentence is "other contexts."

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[8] Specifically, Justice O'Connor stated "it seems to me that the far more reasonable choice would have been to focus on the class of students found to have violated published school rules against severe disruption in class and around campus ... disruption that had a strong nexus to drug use, as the District established at trial." *Vernonia*, 515 U.S. at 685.

Some commentators have taken this to mean that the majority would look with disfavor on any testing in the school context beyond that of student athletes. *See e.g.* Stefkovich J., *Drug Testing of Students in Public Schools: Implications of Vernonia School District v. Acton for other Types of School-Related Drug Searches*, 113 Ed.Law Rep. 521, 538 (Dec. 12, 1996). Other commentators have taken the opposite position, arguing that *Vernonia* permits the blanket testing of all students. *See e.g.* Bursch, J. *The 4 R's of Drug Testing in Public Schools: Random is Reasonable and Rights are Reduced*, 80 Minn.L.Rev. 1221, 1253 (May, 1996) and Rosenberg, I. *Public School Drug Testing: The Impact of Acton*, 33 Am.Crim.L.Rev. 349, 360 (Winter, 1996). The latter conclusion is based on the sentence in the majority opinion in *Vernonia* immediately following the cautionary note which provides that "[t]he most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government's responsibilities, under a public school system, as guardian and tutor of children entrusted to its care." *Vernonia*, 515 U.S. at 664. Thus it is argued that the second sentence qualifies the cautionary note and the two taken together support generalized testing of all students, not just those involved in extracurricular athletics.[9] Presumably it was this ambiguity that led Justice Ginsburg in concurrence to say that: "I comprehend the Court's opinion as reserving the question whether the District, on no more than the showing here, constitutionally could impose routine drug testing not only on those seeking to engage with others in team sports, but on all

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[9] In fact NCAA testing of college athletes reveals that drug use by student athletes is actually far less than that of the general school population. *See* Traband, R., *The Acton Case: The Supreme Court's Gradual Sacrifice of Privacy Rights on the Altar of the War on Drugs*, 100 Dock.L.Rev. 1, 24-24 n 122 (Fall, 1995)(collecting studies).

students required to attend school." *Vernonia*, 515 U.S. at 666 (Ginsburg, J. concurring).[10]

As a consequence of this give and take the *Vernonia* decision presents more questions than it answers. As noted by one commentator:

> The most important question is whether the holding will be read narrowly, applying to the specific facts of the case, or whether the holding will be extended to the drug testing of all student participants in extracurricular activities or even an entire student population. The majority, perhaps anticipating this question, stated: "We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts. This "answer" is vague. What other contexts? Does this holding apply to other extracurricular activities? If so, does it apply to other extracurricular activities that do not ordinarily require their participants to undress in each others presence? Does it apply to all public school students? Is it necessary to find that the particular group of students to be tested is known to use drugs? Or, can a court simply note that drugs are a national problem?

Joubert D., *Message in a Bottle: The United States Supreme Court Decision in Vernonia School District 47J v. Acton*, 56 La.L.Rev. 959, 977 (1996)(Citations omitted).

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[10] The fact that the other six members of the majority declined to join in Justice Ginsburg's concurrence would seem to indicate that her concern about the reserved issue was not one the other members of this Court shared.

B. Conflicting Opinions on the Reserved Issue

As a result of the "reserved" issue, the lower courts have come into conflict in their application of Vernonia. Schools with significant drug problems have been forced to simply take their chances in crafting drug testing policies and have all too frequently been sued for their efforts. This conflicting authority can be seen when *Todd v. Rush County Schools*, 133 F.3d 984, *reh'g. en banc, denied*, 139 F.3d 571 (7th Cir.) *cert. denied*, 142 L.Ed.2d 53 (1998) is compared with *Trinidad School District No. 1 v. Lopez*, 963 P.2d 1095 (Col. 1998). In *Todd* the Seventh Circuit expanded *Vernonia* by holding that a drug testing policy which applied to students involved in non-athletic extracurricular activities was valid. The Court did so noting that "[w]e conclude that Rush County Schools' drug testing program is sufficiently similar to the programs in *Vernonia* and *Schaill* to pass muster under the Fourth and Fourteenth Amendments." *Todd*, 133 F.3d at 986-987. In contrast, the Colorado Supreme Court in *Trinidad* found unconstitutional a drug testing policy which "included all students participating in all extracurricular activities." *Id.*, 963 P.2d at 1109. The court noted that "[t]here is no evidence in the record to suggest that marching band members are like 'school athletes, where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high.' Indeed, the band director testified that during his twenty-three years as the band director, there had never been a drug-related injury to a student participating in the marching band." *Id.*, *citing Vernonia*, 515 U.S. at 662. Thus there is a clear conflict between the Seventh Circuit and the Colorado Supreme Court on the reserved issue in *Vernonia*.

C. The Co-Curricular Issue and Testing of all Students.

The *Trinidad* and *Todd* cases also illustrate the problems that *Vernonia* presents with respect to "co-curricular" student activities, i.e. those activities that involve student participation outside regular class hours, that are related to a specific class, and are required in order for an enrolled student to receive a grade or credit. As noted by Justice Scott in his dissenting opinion in *Trinidad*:

> For privacy reasons I see no reason to distinguish between a voluntary extracurricular activity and an elective co-curricular activity. In both situations, participation is optional, i.e. students are not required to play in marching band in order to graduate any more than they are required to play on the football team. If the Trinidad schools gave physical education credit to members of the football team, the invasion of privacy resulting from mandatory drug testing would be no different, and the validity of the testing program as applied to athletes would not change. I simply cannot see any principled basis for drawing the line between co-curricular activities on the one hand and entirely extracurricular activities on the other.

Trinidad, 963 P.2d at 1115.

Justice Scott is correct, there is no logical reason to limit *Vernonia* to students who participate in extracurricular athletics. In fact there is no logical reason to limit it at all in the school context. When such a suggestion is presented the immediate response is a cry of fascism and the dangers of uncontrolled governmental intrusions into

individual liberties. However, these concerns ignore the very important limitation on **any** drug testing in the schools (extracurricular or otherwise), and that is that prior to the implementation of any drug testing policy the school must show "compelling"[11] and "immediate[ ] governmental concern." *Vernonia*, 515 U.S. at 660-661; *Skinner v. Railway Labor Executives' Ass'n.*, 489 U.S. 602, 668 (1989). In *Vernonia* this concern was documented by evidence that "'a large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion,' that '[d]isciplinary actions had reached 'epidemic proportions,'' and that 'the rebellion was being fueled by alcohol and drug abuse as well as by the student's misperceptions about the drug culture.'" *Id.*, 515 U.S. at 662-663.

This is a significant limitation on a school's ability to implement a policy to test all students. The framework crafted by the majority in *Vernonia* creates a nice balance between the interests of the schools in eradicating drug use and the limited but acknowledged privacy interests of the students in all situations, not just extacurricular athletics. The *Willis* case presents this court with an excellent opportunity to confirm that its well reasoned analysis applies beyond the extracurricular athletic arena. Thus although a school could constitutionally randomly test all students as Justice Scalia indicated in the majority opinion in *Vernonia*, in order to do so the school would have to make a pretty compelling showing.

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[11] There is some confusion as to whether "compelling" as used in *Vernonia* means compelling in the ordinary constitution lexicon, or whether it merely means "important enough to justify the particular search at hand, in light of other factors which show the search to be relatively intrusive upon a genuine expectation of privacy." *Id.*, 515 U.S. at 661.

III. THIS COURT SHOULD RESOLVE THE "RESERVED ISSUE."

The confusion over the scope of *Vernonia* is both real and immediate. Based on the severity of the drug problem in America, the youthful age at which students are getting their first introduction to gateway (tobacco and alcohol) drugs, the lack of success of traditional educational programs, and the *Vernonia* decision, schools will (rightly or wrongly) turn to drug testing in increasing numbers as a solution to this problem. Without clear guidelines from this Court schools are as likely to get things wrong as get them right. An approach which forces schools to guess at what is constitutionally permissible is counter-productive, drains precious educational resources, and sends the wrong message to our Nation's youth.

The Indiana experience is an excellent example of this.[12] Faced with increasing student drug use, in 1987 the Tippecanoe County School Corporation adopted a policy testing student athletes. The Indiana Civil Liberties Union ("ICLU") challenged that policy which resulted in a bench trial and an appeal to the Seventh Circuit. The Seventh Circuit affirmed the policy in a pre-*Vernonia* decision, *Schaill v. Tippecanoe County School Corporation*, 864 F.2d 1309 (7th Cir. 1988). Following the *Vernonia* decision the Rush County School Corporation adopted a policy that mandated testing of all students involved in extracurricular activities both athletic and non-athletic. Again litigation by the ICLU ensued and once again the Seventh Circuit approved the program. *Todd, supra.*

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[12] For some reason Indiana has been at the forefront of student drug-testing issues. *See e.g.* Gibeaut, J., *Indiana Schools Push for Expansion of Drug Test Ruling*, 84-May A.B.A. J. 42 (May 1998) and Flatt-Moore, N., *Public Schools and Urinalysis: Assessing the Validity of Indiana Public Schools' Student Drug Testing Policies after Vernonia*, 1998 B.Y.U. Educ. & L.J. 239 (Spring, 1998).

In 1997 the Anderson Community School Corporation, again faced with increasing drug and alcohol use among students and statistical correlations between drug use and student violence, adopted a policy that tested "any student who: is suspended for three or more days for fighting; is habitually truant; or violates any other school rule that results in at least a three-day suspension." *Willis*, 158 F.3d at 417. Utilizing the *Vernonia* opinion the District Court Judge noted that "[t]he court recognizes, however, that applying *Vernonia* to a nonrandom search is an extension of *Vernonia*, but it is the logical extension." (Cert Petition, Appendix "B", p. 48a) The Seventh Circuit disagreed with this logical extension of *Vernonia* and the parties are now before this Court.

This narrative shows how in Indiana alone, tremendous amounts of money have been spent on drug-testing litigation in order to try and flesh out the meaning of the ambiguous language used in *Vernonia*. This is money that would have been better spent educating the children of Indiana rather than employing lawyers.

In addition to the wasted resources that continued lower court litigation entails, the "hit and miss" method of implementing drug testing currently taking place throughout the Nation's schools and courtrooms also has a significant negative impact on students themselves. Amici are acutely aware of this Court's admonition "[t]hat [the fact that schools] are educating the young people for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principals of our government as mere platitudes." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 637 (1943). The problem with the "percolation" theory is that until this Courts sets clear guidelines, thousands of students such as Mr. Willis will be subjected to forms of drug testing that may later be found

to be unconstitutional. Such a regime undercuts both student respect for Constitutional freedoms and their rights as citizens as well as the Nation's schools' ability and moral authority to teach about these freedoms.

There would be significant national benefit to having a clear and concise set of guidelines from this Court on the constitutionality of drug testing beyond that rendered in *Vernonia*. *Willis* provides this Court with the opportunity to do this. It may very well be that this Court, after weighing the concerns noted in Justice O'Connors' dissent, concludes that the Seventh Circuit's voluntary contract analysis in *Willis* is the appropriate analysis to apply and that schools may not compel students who have not made such an agreement to undergo random suspicionless drug testing, thus effectively deciding the reserved issue in *Vernonia*. Or this Court may, using Justice Scalia's analysis, permit what many commentators have predicted, random drug testing of the entire student population rejecting the "voluntary contract" analysis used by the Seventh Circuit.[13] At the very least, regardless of the outcome, the resolution of the reserved issue in *Vernonia* will stop the flow of badly needed educational funds into drug-testing litigation, it will eliminate the loss of respect that students may have for their rights as citizens as they see them taken away and later restored as conflicting courts enter different decisions on this issue, and most importantly, it will let educators get on with the business of educating students, not playing policeman or lawyer in developing and implementing drug-testing policies.

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[13] *See e.g. The 4R's*, 80 Minn.L.Rev. at 1251 containing a proposed random drug testing policy covering the entire student population.

CONCLUSION

"[T]he necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction." *Vernonia,* 515 U.S. at 662. Schools cannot and will not abrogate their duty to educate the students entrusted to their care in a safe and conducive learning environment. As a consequence, in their efforts to combat drug use among students, schools will continue to use drug testing as one weapon in their arsenal. Given this fact, the Amici respectfully request that this Court grant the Petition for a Writ of Certiorari and decide the issue, reserved in *Vernonia*.

Respectfully submitted,

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